

Mark A. Pals, P.C. (*pro hac vice*)
mpals@kirkland.com
Marcus E. Sernel (*pro hac vice*)
msernel@kirkland.com
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, IL 60654
(312)862-2000 (o); (312)862-2200 (f)

David I. Gindler (SBN 117824)
dgindler@irell.com
Joseph M. Lipner (SBN 155735)
jlipner@irell.com
IRELL & MANELLA, LLP
1800 Avenue of the Stars
Los Angeles, CA 90067
(310)277-1010 (o); (310)203-7199 (f)

Daralyn J. Durie (SBN 169825)
ddurie@durietangri.com
Mark Lemley (SBN 155830)
mlemley@durietangri.com
DURIE TANGRI LLP
217 Leidesdorff Street
San Francisco, CA 94111
(415)362-6666 (o); (415)236-6300 (f)

Attorneys for CITY OF HOPE

Attorneys for GENENTECH, INC.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

CENTOCOR ORTHO BIOTECH, INC.,

Plaintiff,

v.

GENENTECH, INC. AND CITY OF
HOPE,

Defendants.

GENENTECH, INC. AND CITY OF
HOPE,

Counter-Plaintiffs

v.

CENTOCOR ORTHO BIOTECH, INC.,

Counter-Defendant

AND

GLOBAL PHARMACEUTICAL
SUPPLY GROUP, LLC, CENTOCOR
BIOLOGICS, LLC, AND JOM
PHARMACEUTICAL SERVICES, INC.,

Third-party Defendants.

Case No. CV 08-03573 MRP (JEMx)

The Honorable Mariana R. Pfaelzer

**DEFENDANTS' EX PARTE
APPLICATION FOR
PROTECTIVE ORDER
PROHIBITING THE
DEPOSITION OF GENENTECH
COUNSEL JEFFREY KUSHAN;
AND OPPOSITION TO
PLAINTIFF'S EX PARTE
APPLICATION FOR LEAVE TO
TAKE DEPOSITION OF
WITNESS JEFFREY KUSHAN
AFTER DISCOVERY CUT-OFF**

1 Pursuant to Federal Rules of Civil Procedure 26(b) and (c), Defendants
2 Genentech, Inc, and City of Hope (collectively "Genentech") move for a Protective
3 Order prohibiting the deposition of Jeffery P. Kushan by Plaintiff Centocor Ortho
4 Biotech, Inc. ("Centocor"). As set forth more fully in the accompanying
5 Memorandum, Centocor's subpoenaing of Mr. Kushan is untimely and is not directed
6 toward discovery of any claim or defense in this case. It is instead improperly
7 directed toward obtaining discovery related to Centocor's unpled inequitable conduct
8 theories, whose eleventh hour introduction into this case is both prejudicial and
9 untimely.

10 Furthermore, and for the same reasons as above, Defendants file this Opposition
11 To Plaintiff's Ex Parte Application For Leave To Take Deposition Of Witness Jeffrey
12 Kushan After Discovery Cut-Off.

13 WHEREFORE for the foregoing reasons and those set forth in the
14 Memorandum accompanying this Motion, the Court should allow this Application and
15 order that the Rule 30(b)(1) deposition of Jefferey P. Kushan not go forward.
16 Furthermore, this court should deny Centocor's Application and not allow Centocor to
17 Depose Mr. Kushan at any time, before or after the discovery cut-off.

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2 Dated: April 28, 2010

Respectfully Submitted,

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4 By: /s/ Marcus E. Sernel
Mark A. Pals, P.C.
Marcus E. Sernel
KIRKLAND & ELLIS LLP
300 North LaSalle Street
Chicago, IL 60654

5
6
7 Daralyn J. Durie
Mark Lemley
DURIE TANGRI LLP
217 Leidesdorff Street
San Francisco, CA 94111

8
9
10 *Attorneys for Genentech, Inc.*

11
12 By: /s/ David I. Gindler
David I. Gindler
Joseph M. Lipner
IRELL & MANELLA, LLP
1800 Avenue of the Stars
Los Angeles, CA 90067

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15 *Attorneys for City of Hope*

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17 **CERTIFICATE OF COMPLIANCE - L.R. 7-19 AND 7-19.1**

18 Notice of this Ex Parte Application was given to counsel for CENTOCOR at 5:53 PM
19 on April 27, 2010, to the following CENTOCOR counsel:

20 Matthew Pearson
Akin Gump Strauss Hauer & Feld LLP
21 Two Commerce Square
2001 Market Street
22 Suite 4100
Philadelphia, PA 19103-7013
23 T (1) 215.965.1258
mpearson@akingump.com

24
25 By: /s/ Marcus E. Sernel
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